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REMARKS

The Applicant thanks the Examiner for the courtesy extended in the 2 May 2005 telephone conference between the Examiner and the Applicant's agent. The Applicant submits that this Amendment revises the claims in the manner discussed in the 2 May 2005 telephone conference and places this application in condition for allowance.

Summary of 2 May 2005 Telephone Conference

The Applicant's agent conducted a telephone conference with Examiner Boles on 2 May 2005.

Prior to the telephone conference, the Applicant agent provided Examiner Boles with an exhibit entitled "Submission for the Purposes of Discussion Re: 10/612,270 on 2 May 2005". A copy of that exhibit is enclosed herewith in compliance with the Applicant's duty to make the substance of an interview of record as explained in MPEP § 713.04. The telephone conference involved a discussion of claim 1 (as amended 6 January 2005) and claim 47 (as originally filed). The Applicant's agent submitted that each of these claims recites features which patentably distinguish the prior art of record.

The Examiner provided a preliminary indication that claim 47 distinguished Marcello et al. and that the Office Actions of 2 March 2005 and 7 October 2004 improperly rejected claim 47. The Examiner indicated that he would consider withdrawing the finality of the 2 March 2005 Office Action on the basis of the improper rejection of claim 47.

The Examiner expressed the view that, according to his interpretation of internal and external building surface layers, US patent No. 5,383,816 (Marcello et al.) disclosed the features of claim 1. The Applicant's Agent suggested that the Applicant would file an amendment after final, amending claim 1 (and other independent apparatus claims) to recite that the mounting flange of the Applicant's vent extends between the building surface layers in a direction parallel to the building surface layers.

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Introduction

Claims 1-36 and 42-47 are currently pending.

The Applicant has amended independent claims 1, 27 and 42 to recite that the mounting flange of the Applicant's vent extends between the building surface layers in a direction parallel to the building surface.

Allowed Claims

Claims 5, 7, 10-12, 31, 34 and 35 are allowed.

Request for Withdrawal of Holding of Finality

As discussed in the 2 May 2005 telephone conference, the Applicant submits that the rejection of at least claim 47 in the 2 March 2005 Office Action was improper based on the reasons presented below. Claim 47 as originally filed is submitted to patentably distinguish the prior art of record. Accordingly, the Applicant respectfully requests that the finality of the 2 March 2005 Office Action be withdrawn pursuant to MPEP §706.07(d)-(e).

Claim 47

The 2 March 2005 Office Action rejected claim 47 under 35 U.S.C. §102(b). As discussed in the 2 May 2005 telephone conference, the Applicant respectfully submits that Marcello et al. fails to disclose the features of claim 47 and that the rejection of claim 47 was improper.

Claim 47 recites the combination of "mounting a base member to an internal building surface layer" and "after mounting the base member, installing one or more external building surface layers onto the internal building surface layer, such that the one or more external building surface layers overlap a portion of the base member" and "after installing the one or more external building surface layers, removably mounting a vent cover to the base member". Marcello et al. fail to teach or suggest this combination of features. More particularly, Marcello et al. specifically teach that "[t]he flange portion 52 is adapted to interface with the outer surface 23 of the wall structure 22..." (col. 4, ln. 24-26). In addition to specifically teaching that the exhaust box is mounted to the outer

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surface of the building, Figures 1 and 2 show that the Marcello et al. exhaust box incorporates a removably attachable rain grill (60) which is located immediately outside of flange portion (52) and is radially co-extensive with flange portion (52). Because of the location of the Marcello et al. rain grill (60), there is no room for any external building layer(s) to overlap flange (52). It would be impossible to mount overlapping external building layer(s) after mounting the main body portion (30) of the Marcello et al. exhaust box, because such external building layer(s) would prevent the attachment of the Marcello et al. rain grill (60).

Based on this reasoning, the Applicant submits that claim 47 patentably distinguishes Marcello et al.

Claims 1-4, 6, 8-9, 13-26

The Examiner has raised Marcello et al. in relation to claim 1. The Applicant submits that claim 1 patentably distinguishes Marcello et al.

Claim 1 recites a vent having a base member with "a generally planar mounting flange on at least a portion of the perimeter thereof for mounting the base member within a building surface". Claim 1 also recites that the mounting flange is "shaped to permit at least a portion of the mounting flange to extend between an internal building surface layer and one or more external building surface layers". Marcello et al. do not disclose or suggest this combination of features.

As discussed above, Marcello et al. teach that the flange portion (52) is used to mount the Marcello et al. exhaust box to the outer surface of a building and not between an internal and one or more external building surface layers as recited in claim 1. Marcello et al. disclose that the flange portion (52) extends radially from the exterior end (34) of the main body portion (30) (col. 4, ln. 23-24). The 2 March 2005 Office Action contends that main body portion (30) and flange (52) are "one piece that extends between surface layers". Marcello et al. do not specifically teach that flange portion (52) and main body portion (30) are integral with one another. Even if flange portion (52) and body portion (30) were integral with one another, claim 1 recites that the mounting flange is "generally planar". The combination of the main body portion (30) and the flange (52) of Marcello et al. is not generally planar and therefore cannot be interpreted to disclose the features of the mounting flange recited in claim 1.

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In addition to this previously existing distinction, the Applicant has further amended claim 1 (as discussed in the 2 May 2005 telephone conference) to recite that the mounting flange is "shaped to permit at least a portion of the mounting flange to extend between an internal building surface layer and one or more external building surface layers in a direction generally parallel to at least one of: the internal building surface layer and the one or more external building surface layers". Marcello et al. do not teach or suggest this feature of claim 1. Whether or not the main body portion (30) and the flange portion (52) of the Marcello et al. exhaust box are integral with one another, neither the main body portion (30) nor the flange portion (52) of the Marcello et al. exhaust box extends between building surface layers in a direction that is generally parallel to one of the building surface layers as recited in this claim 1 feature.

Based on this reasoning, the Applicant submits that claim 1 patentably distinguishes Marcello et al. Claims 2-4, 6, 8-9 and 13-26 depend from claim 1 and are submitted to be patentable for at least this reason.

Claims 27-30, 32, 33 and 36

The Examiner has raised Marcello et al. in combination with US patent No. 2,052,315 (Riesner) in relation to claim 27. The Applicant submits that claim 27 patentably distinguishes the combination of Marcello et al. and Riesner.

Claim 27 recites a vent having a base member which comprises "a generally planar mounting flange on at least a portion of the perimeter of the base member for mounting the base member within the building surface, the mounting flange shaped to permit at least a portion of the mounting flange to extend between an internal building surface layer and one or more external building surface layers". As discussed above, Marcello et al. fail to teach or suggest the claim 27 feature of a mounting flange which is generally planar and which has a portion shaped to extend between building surface layers.

Riesner fails to remedy this deficiency. Riesner does not teach or suggest the claim 27 feature of a mounting flange which is generally planar and which has a portion shaped to extend between building surface layers.

In addition to this previously existing distinction, the Applicant has further amended claim 27 (in a manner consistent with the 2 May 2005 telephone conference) to recite that

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the mounting flange is "shaped to permit at least a portion of the mounting flange to extend between an internal building surface layer and one or more external building surface layers in a direction generally parallel to at least one of: the internal building surface layer and the one or more external building surface layers". Marcello et al. do not teach or suggest this feature of claim 27. Neither the main body portion (30) nor the flange portion (52) of the Marcello et al. exhaust box extends between building surface layers in a direction that is generally parallel to one of the building surface layers. Riesner also fails to disclose or suggest this feature of claim 27.

Based on this reasoning, the Applicant submits that claim 27 patentably distinguishes the combination of Marcello et al. and Riesner. Claims 28-30, 32, 33 and 36 depend from claim 27 and are submitted to be patentable for at least this reason.

Claims 42-46

The Examiner has raised Marcello et al. in relation to claim 42. The Applicant submits that claim 42 patentably distinguishes Marcello et al.

Claim 42, as amended, recites a vent having a base member with a "substantially planar mounting flange on at least a portion of its perimeter, at least a portion of the mounting flange extending between layers of a multiple layer building surface". As discussed above, Marcello et al. fail to teach or suggest the claim 42 feature of a mounting flange which is substantially planar and which has a portion shaped to extend between building surface layers.

In addition to this distinction, the Applicant has further amended claim 42 (in a manner consistent with the 2 May 2005 telephone conference) to recite that at least a portion of the mounting flange extends "between layers of a multiple layer building surface in a direction generally parallel to the building surface". Neither the main body portion (30) nor the flange portion (52) of the Marcello et al. exhaust box extends between building surface layers in a direction that is generally parallel to the building surface.

Accordingly, the Applicant submits that claim 42 patentably distinguishes Marcello et al. Claims 42-46 depend from claim 42 and are submitted to be patentable for at least this reason.

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Conclusions

In view of the foregoing amendments and comments, the Applicant respectfully requests:

- withdrawal of the finality of the 2 March 2005 Office Action; and
- reconsideration and allowance of this application.

Respectfully submitted,
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